

March 31, 1976

## CONGRESSIONAL RECORD — SENATE

S 4651

SENATE CONCURRENT RESOLUTION  
107—SUBMISSION OF A CONCURRENT RESOLUTION AUTHORIZING THE PRINTING OF CERTAIN COMMITTEE PRINTS

(Referred to the Committee on Rules and Administration.)

Mr. CHURCH submitted the following concurrent resolution:

S. CON. RES. 107

Resolved by the Senate (the House of Representatives concurring), that there be printed for the use of the Committee on Foreign Relations five thousand copies each of the following hearings and Committee Prints entitled: "Multinational Corporations and U.S. Foreign Policy" (Volumes 1 and 2); "Multinational Oil Corporations and U.S. Foreign Policy, Report Together with Individual Views, January 2, 1975;" "Multinational Corporations in Brazil & Mexico: Structural Sources of Economic & Noneconomic Power, Report to the Subcommittee on Multinational Corporations" by Richard Newfarmer and Willard F. Mueller; "Direct Investment Abroad and the Multinationals: Effects on the United States Economy," prepared for the use of the Subcommittee on Multinational Corporations by Peggy B. Musgrave."

AMENDMENTS SUBMITTED FOR  
PRINTINGOFFICE OF CONGRESSIONAL LEGAL  
COUNSEL—S. 2731

AMENDMENT NO. 1547

(Ordered to be printed and referred to the Committee on Government Operations.)

Mr. ABOUREZK. Mr. President, today I am submitting an amendment in the nature of a substitute to S. 2731, the bill I introduced on December 2, 1975, to establish an Office of Congressional Legal Counsel. That measure was referred to the Government Operations Committee where it is under consideration in connection with that Committee's deliberations on S. 495, the Watergate Reorganization and Reform Act.

This amendment, based on considerable study by the Separation of Powers Committee, which I chair, significantly refines my earlier proposal. I am looking forward to working with the distinguished Chairman of the Committee on Government Operations, Senator RIBICOFF, and the other members of that committee on this legislation.

I ask unanimous consent that my amendment be printed in the Record.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

AMENDMENT No. 1547

Strike out all after the enacting clause, and insert in lieu thereof the following:

That this Act may be cited as the "Separation of Powers Revitalization Act of 1976".

## FINDINGS OF FACT

Sec. 2. The Congress finds that—

(a) Congress is granted specific powers and responsibilities under article I of the Constitution of the United States;

(b) Congress is in need of representation by professional legal counsel in cases and controversies involving such powers and responsibilities;

(c) presently Congress largely relies on the executive branch of the Government to provide such counsel; and

(d) the executive branch of the Government is unable to represent Congress in cases and controversies involving the powers and responsibilities of Congress and the executive branch in a manner consistent with the constitutional concept of separation of powers.

## DECLARATION OF PURPOSE

Sec. 3. It is the purpose of this Act to establish within the Congress an Office of Congressional Legal Counsel to represent the legislative branch of the Government in cases and controversies involving the powers and responsibilities of the legislative branch of the Government to insure the continued equality of the legislative, executive, and judicial branches of the Government.

## ESTABLISHMENT

Sec. 4. (a) (1) There is established as an office of the Congress, the Office of Congressional Legal Counsel (hereinafter referred to as the "Office"), which shall be under the direction and control of the Congressional Legal Counsel. The Congressional Legal Counsel shall be appointed jointly, by the President pro tempore of the Senate and the Speaker of the House of Representatives from among recommendations submitted by the majority and minority leaders of the Senate and the House of Representatives. Such appointment shall become effective upon approval, by concurrent resolution, of the Senate and the House of Representatives.

(2) The Congressional Legal Counsel shall be appointed for a term which shall expire at the end of the Congress following the Congress during which such person is appointed except that the Congress may, by concurrent resolution, remove the Congressional Legal Counsel for misconduct, incapacity, or incompetence. The Congressional Legal Counsel may be reappointed at the termination of any term of office.

(3) The Congressional Legal Counsel shall receive compensation at a per annum gross rate equal to the rate of base pay, as in effect from time to time for level III of the Executive Schedule under section 5314 of title 5, United States Code.

(b) (1) (A) The Congressional Legal Counsel shall appoint and fix the compensation of such Assistant Congressional Legal Counsels as may be necessary to carry out the provisions of this Act. The Congressional Legal Counsel may delegate authority for the performance of any function imposed by this Act to any Assistant Congressional Legal Counsel except any function imposed upon the Congressional Legal Counsel except any function imposed upon the Congressional Legal Counsel under section 8(b) of this Act. Any Assistant Congressional Legal Counsel shall serve at the pleasure of the Congressional Legal Counsel.

(B) The Congressional Legal Counsel shall appoint and fix the compensation of such other personnel as may be necessary to carry out the provisions of this Act and may prescribe the duties and responsibilities of such personnel.

(C) For purposes of pay (other than pay of the Congressional Legal Counsel) and employment benefits, rights, and privileges, all personnel of the Office shall be treated as if they were employees of the Senate.

(2) In carrying out the functions of the Office, the Congressional Legal Counsel may procure the temporary (not to exceed one year) or intermittent services of individual consultants, or organizations thereof, in the same manner and under the same conditions as a standing committee of the Senate may procure such services under section 202(1) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72(1)).

(c) Any appointment made under subsection (a) or (b) of this section shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the Office. Any person appointed as Congressional Legal Counsel or Assistant Congressional Legal Counsel shall be learned in the law, shall not have been a candidate for or holder of elected local, State, or Federal Government office for five years prior to or at the time of the appointment, and shall not engage in any other business, vocation, or employment during the term of such appointment, nor for a period of five years after such term, engage in any activity requiring such person to register under section 308(a) of the Legislative Reorganization Act of 1946 (2 U.S.C. 287(a)).

(d) The Congressional Legal Counsel may make, promulgate, rescind, amend, and shall publish in the Congressional Record such rules and regulations as may be necessary to carry out the provisions of this Act. Such regulations shall take effect after ten calendar days of continuous session of Congress following publication unless the Congress, by concurrent resolution, disapproves, amends, or supplements such rules and regulations. The Congress, by concurrent resolution, may from time to time rescind, amend, or supplement any such rules and regulations.

## DEFENDING A HOUSE, COMMITTEE, MEMBER, OFFICER, AGENCY OR EMPLOYEE OF CONGRESS

Sec. 5. (a) The Congressional Legal Counsel, at the direction of Congress or the appropriate House of Congress shall—

(1) defend Congress, a House of Congress, an office or agency of Congress, a committee or subcommittee, or any Member, officer, or employee of a House of Congress made a party defendant in any civil action pending in any court of the United States or political subdivision thereof in which there is placed in issue the validity of any proceeding of, or action, including issuance of any subpoena or order, taken by Congress, such House, committee, subcommittee, Member, officer, employee, office, or agency; or

(2) defend Congress, a House of Congress, an office or agency of Congress, a committee or subcommittee, or a Member, officer, or employee of a House of Congress in any civil action pending in any court of the United States or of a State or political subdivision thereof with respect to any subpoena or order directed to Congress, such House, committee, subcommittee, Member, officer, employee, office, or agency.

(b) Representation of a Member, officer, or employee under section 5(a) shall be undertaken by the Congressional Legal Counsel only upon the consent of such Member, officer, or employee. The resolution directing the Congressional Legal Counsel to represent a Member, officer, or employee may limit such representation to constitutional issues relating to the power and responsibilities of Congress.

INSTITUTING A CIVIL ACTION TO ENFORCE  
A SUBPENA OF ORDER

Sec. 6. (a) The Congressional Legal Counsel, at the direction of Congress or the appropriate House of Congress shall bring a civil action under any statute conferring jurisdiction on any court of the United States to enforce, or issue a declaratory judgment concerning the validity of, any subpoena or order issued by Congress, or a House of Congress, a committee, a subcommittee of the Senate, or a subcommittee of a joint committee of Congress;

(b) nothing in section 6(a) shall limit the discretion of—

(1) the President pro tempore of the Senate or the Speaker of the House of Representatives in certifying to the United States Attorney for the District of Columbia any

matter pursuant to section 104 of the Revised Statutes (2 U.S.C. 194); or

(2) either House of Congress to hold any individual or entity in contempt of such House of Congress.

INSTITUTING A CIVIL ACTION ON BEHALF OF A HOUSE OR COMMITTEE OF CONGRESS TO REQUIRE AN OFFICER OF THE GOVERNMENT TO PERFORM DUTY

SEC. 7. (a) The Congressional Legal Counsel, at the direction of Congress or either House of Congress shall bring a civil action on behalf of Congress, a House of Congress or any committee of Congress under any statute conferring jurisdiction upon any Court of the United States to require an officer or employee of the United States or any agency thereof to perform a duty prescribed by law.

(b) This section shall not apply to any action arising from a refusal by any officer or employee of the executive branch of the Government to testify or to produce information, records, documents, or other material to a House, committee, or subcommittee of Congress.

#### INTERVENTION OR APPEARANCE

SEC. 8. (a) The Congressional Legal Counsel, at the direction of Congress or of either House of Congress or pursuant to subsection (b) of this section, shall intervene or appear as amicus curiae in any legal action pending in any court of the United States or of a State or political subdivision thereof in which—

(1) the constitutionality of any law of the United States is challenged, the United States is a party, and the constitutionality of such law is not adequately defended by counsel for the United States;

(2) a Member, officer, or employee of Congress is not represented by the Congressional Legal Counsel under section 5 of this Act; or

(3) the powers and responsibilities of Congress under article I of the Constitution of the United States are placed in issue.

(b) The Congressional Legal Counsel may intervene or appear as amicus curiae in such action upon a determination by the Congressional Legal Counsel that such intervention or appearance is necessary to carry out the functions of the Congressional Legal Counsel under section 8(a) of this Act. The Congressional Legal Counsel shall notify the President pro tempore of the Senate and the Speaker of the House of Representatives of any such determination to intervene or appear as amicus curiae on the earliest date possible prior to the filing of any documents necessary to effectuate such intervention or appearance and shall publish in the Congressional Record notice of such determination. The Congressional Legal Counsel may proceed with such intervention or appearance after ten calendar days of continuous session of Congress unless such intervention or appearance is disapproved by concurrent resolution or by resolution if only one House of Congress has an interest in the pending matter. Congress or either House of Congress, as is appropriate, may direct the Congressional Legal Counsel to intervene or appear as amicus curiae within such ten day period. Any determination made by the Congressional Legal Counsel pursuant to this section shall not be reviewable in any court of law, except to the extent provided for in section 15(a).

(c) The Congressional Legal Counsel shall limit any intervention or appearance as amicus curiae in an action involving a Member, officer, or employee of Congress to constitutional issues relating to the powers and responsibilities of Congress.

#### IMMUNITY PROCEEDING

SEC. 9. The Congressional Legal Counsel, at the direction of the appropriate House of Congress or any committee of Congress shall serve as the duly authorized representative of such House or committee in requesting a

United States District Court to issue an order granting immunity pursuant to section 201 (a) of the Organized Crime Control Act of 1970 (18 U.S.C. 6005).

#### ADVISORY AND OTHER FUNCTIONS

SEC. 10. (a) The Congressional Legal Counsel shall advise, consult, and cooperate—

(1) with and at the direction of the Comptroller General, represent the Comptroller General in any civil action brought pursuant to section 2016 of the Impoundment Control Act of 1974 (31 U.S.C. 1406);

(2) with the United States attorney for the District of Columbia with respect to any criminal proceeding for contempt of Congress certified pursuant to section 104 of the Revised Statutes (2 U.S.C. 194);

(3) with the Joint Committee on Congressional Operations in identifying any court proceeding or action which is of vital interest to Congress or to either House of Congress under section 402(a) (2) of the Legislative Reorganization Act of 1970 (2 U.S.C. 412(a) (2));

(4) with the Comptroller General, General Accounting Office, the Office of Legislative Counsel of the Senate and House of Representatives, and the Congressional Research Service;

(5) with any Member, officer or employee of Congress not represented under section 5 herein with regard to obtaining private legal counsel for such Member, officer, or employee; and

(6) with the President pro tempore of the Senate, the Speaker of the House of Representatives, and the Parliamentarians of the Senate and House of Representatives regarding any subpoena, order, or request for the withdrawal of papers presented to the Senate and House of Representatives or which raises a question of the privileges of the Senate or House of Representatives.

(b) The Congressional Legal Counsel shall compile and maintain research files of materials from court proceedings which have involved Congress, a House of Congress, an office or agency of Congress, or any committee, subcommittee, Member, officer, or employee of Congress. The Attorney General shall cooperate fully with the Congressional Legal Counsel in compiling such research files. Such research files shall be made available to the public consistent with any applicable procedures set forth in such rules of the Senate and House of Representatives with respect to the withdrawal of paper presented to the Senate and House of Representatives and the interests of the Congress.

(c) The Congressional Legal Counsel shall perform such other duties as the appropriate House of Congress may direct; provided however, that any such duties shall be consistent with the purposes and limitations of this Act.

#### DEFENSE OF THE CONSTITUTIONAL POWERS OF CONGRESS

SEC. 11. In performing any function under sections 5 through 9, and in representing the Comptroller General under section 10(a) (1), of this Act, the Congressional Legal Counsel shall defend vigorously when placed in issue—

(a) the constitutional privilege from arrest or from being questioned in any other place for any speech or debate under article I, section 6 of the Constitution of the United States;

(b) the constitutionality of statutes enacted by Congress;

(c) the constitutional power of each House of Congress to be judge of the elections, returns and qualifications of its own Members and to punish or expel a Member under article I, section 5 of the Constitution of the United States;

(d) the constitutional power of each House of Congress to except from publication

such parts of its journal as in its judgment may require secrecy;

(e) the constitutional power of each House of Congress to determine the rules of its proceedings;

(f) the constitutional power of Congress to make all laws as shall be necessary and proper for carrying into execution the constitutional powers of Congress and all other powers vested by the Constitution in the Government of the United States, or in any Department or office thereof.

(g) all other constitutional and statutory powers and responsibilities of Congress.

#### CONFLICT OR INCONSISTENCY

SEC. 12. (a) In the carrying out of the provisions of this Act, the Congressional Legal Counsel shall notify the Congress or the appropriate House of Congress, and any party represented or to be represented pursuant to such provisions of the existence and nature of any conflict or inconsistency between the representation of such party and the carrying out of any other provisions of this Act, or compliance with professional standards and responsibilities.

(b) Upon receipt of such notification, the Congress by concurrent resolution or the appropriate House by resolution, shall instruct the Congressional Legal Counsel of the action to be taken to avoid or resolve the conflict or inconsistency. If Congress or the appropriate House of Congress does not so instruct the Legal Counsel within fifteen days from receipt of notification, the Legal Counsel shall take such action as may be necessary to resolve the conflict or inconsistency. Any instruction or determination made pursuant to this subsection shall not be reviewable in any court of law.

(c) The appropriate House of Congress may by resolution authorize the reimbursement of any Member, officer, or employee who is not represented by the Congressional Legal Counsel under section 12(b) or who declines to be represented pursuant to section 5(b) for costs reasonably incurred in obtaining representation. Such reimbursement shall be from funds appropriated to the contingent fund of the appropriate House.

#### HOUSE AND SENATE PROCEDURE

SEC. 13. (a) Directives made pursuant to sections 5(a), 6(a), 7(a), 8(a), 9 and 10(a) of this Act shall be made as follows:

(1) directives made by Congress pursuant to sections 5(a) and 6(a) of this Act shall be authorized by a concurrent resolution of Congress;

(2) directives made by either House of Congress pursuant to sections 5(a), 6(a), 7(a), 8(a), and 9 of this Act shall be authorized by passage of a resolution of such House;

(3) directives made by a committee of Congress pursuant to section 9 of this Act shall be in writing and authorized by an affirmative vote of two-thirds of the members of the full committee; and

(4) directives made by the Comptroller General pursuant to section 10(a) (1) of this Act shall be in writing.

(b) (1) A resolution or concurrent resolution introduced pursuant to section 13(a) shall not be referred to a committee, except as incident to section 13(c) (1) and section 13(d) (1). Upon introduction or when reported as provided in section 13(c) (2) and section 13(d) (2), it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of such resolution or concurrent resolution. A motion to proceed to the consideration of a resolution or concurrent resolution shall be highly privileged and not debatable. An amendment to such motion shall not be in order, and it shall not be in order to move to reconsider the vote by which such motion was agreed to or disagreed to.

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(2) If the motion to proceed to the consideration of the resolution or concurrent resolution is agreed to, debate thereon shall be limited to not more than two hours, which shall be divided equally between, and controlled by, those favoring and those opposing the resolution or concurrent resolution. A motion further to limit debate shall not be debatable. No amendment to, or motion to recommit, the resolution or concurrent resolution shall be in order, except an amendment pursuant to section 5(b) to limit representation by the Congressional Legal Counsel to constitutional issues relating to the powers and responsibilities of Congress. No motion to recommit the resolution or concurrent resolution shall be in order, and it shall not be in order to move to reconsider the vote by which the resolution or concurrent resolution is agreed to or disagreed to.

(3) Motions to postpone, made with respect to the consideration of the resolution or concurrent resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to the resolution or concurrent resolution shall be decided without debate.

(c) It shall not be in order in the Senate or House of Representatives to consider a resolution to direct the Congressional Legal Counsel to bring a civil action pursuant to section 6(a) to enforce, or secure a declaratory judgment concerning the validity of, a subpoena or order issued by a committee, subcommittee of the Senate, or subcommittee of a joint committee unless (1) such resolution is reported by a majority vote of the members of such committee or committee of which such subcommittee is a subcommittee, and (2) the report filed by such committee or subcommittee of which such subcommittee is a subcommittee contains a statement of:

(A) the procedure followed in issuing such subpoena;

(B) the extent to which the party subpoenaed has complied with such subpoena;

(C) any objections or privileges raised by the subpoenaed party; and

(D) the comparative effectiveness of bringing a civil action to enforce the subpoena, certification of a criminal action for contempt of Congress, and initiating a contempt proceeding before a House of Congress.

(d) It shall not be in order in the Senate or the House of Representatives to consider a resolution to direct the Congressional Legal Counsel to bring a civil action pursuant to section 7(a) on behalf of a committee to compel an officer or employee of the executive branch to enforce the law unless (1) such resolution is reported by a majority vote of the members of such committee and (2) the report filed by such committee contains a statement of the comparative effectiveness of any alternative means to compel such officer or employee to enforce the law, including enactment of legislation.

(e) The extent to which a report filed pursuant to sections 13(c)(2) and 13(d)(2) contains such statement or statements shall not be reviewable in any court of law.

(f) For purposes of computation of time in section 4(d), section 8(b), and section 12(b):

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period.

(g) For purposes of this Act, when referred to herein the word committee shall

include standing, select, special or joint committees established by law or resolution.

(h) The provisions of section 13 are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such, they shall be considered as part of the rules of each House, respectively, and such rules shall supersede any other rule of each House only to the extent that such rule is inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to the procedure in such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

(i) Any directive to the Congressional Legal Counsel to bring a civil action pursuant to sections 6(a) and 7(a) of this Act in the name of a committee, joint committee, or subcommittee of Congress shall constitute authorization for such committee, joint committee or subcommittee to bring such action within the meaning of any statute conferring jurisdiction on any court of the United States.

## ATTORNEY GENERAL RELIEVED OF RESPONSIBILITY

SEC. 14. (a) Upon receipt of written notice that the Congressional Legal Counsel has undertaken pursuant to section 5(a) of this Act to perform any representational service with respect to any designated action or proceeding pending or to be instituted, the Attorney General shall be relieved of any responsibility with respect to such representational service and shall have no authority to perform such service in such action or proceeding except at the request or with the approval of the Congressional Legal Counsel or either House of Congress; upon receipt of such notice the Attorney General shall transfer all materials relevant to such actions or proceedings to the Congressional Legal Counsel.

(b) The Attorney General shall notify the Congressional Legal Counsel with respect to any proceeding in which the United States is a party of any determination by the Attorney General or Solicitor General not to appeal any court decision affecting the constitutionality of a statute enacted by Congress within such time as will enable the Congressional Legal Counsel to intervene in such proceeding pursuant to section 8 herein.

## PROCEDURAL PROVISIONS

SEC. 15. (a) Permission to intervene as a party or to file a brief amicus curiae under section 8 of this Act shall be of right, without regard to the requirements for standing as set forth in any provision of law, and may be denied by a court only upon an express finding that such intervention or filing is untimely and would significantly delay the pending action.

(b) Where an actual case or controversy exists, any party on whose behalf an action is brought pursuant to section 6 and 7 of this Act shall have the right to obtain judicial review of the conduct or matter in question without regard to the requirements for standing as set forth in any statutes, rules, or other requirements of standing.

(c) The Congressional Legal Counsel, or any designated Assistant Congressional Legal Counsel, shall be entitled for the purpose of performing the functions imposed by this Act to enter an appearance in any such proceeding before any court of the United States without compliance with any requirement for admission to practice before such court, except that the authorization conferred by this paragraph shall not apply with respect to the admission of any person to practice before the United States Supreme Court.

(d) Nothing in this Act shall be construed to confer standing on any party seeking to bring, or jurisdiction on any court with re-

spect to, any action, civil or criminal, against Congress, either House of Congress, a Member of Congress, a committee or subcommittee of Congress, or any officer, employee, office, or agency of Congress.

(e) In any civil action brought pursuant to sections 6 or 7 of this Act, the court shall assign the case for hearing at the earliest practicable date and to cause the case in every way to be expedited. Any appeal or petition for review from any order or judgment in such action shall be expedited in the same manner.

## TECHNICAL AND CONFORMING AMENDMENTS

SEC. 16. (a) Section 3210 of title 39, United States Code, is amended—

(1) by striking out in subsection (b)(1) "and the Legislative Counsels of the House of Representatives and the Senate" and inserting in lieu thereof the following: "the Legislative Counsels of the House of Representatives and the Senate, and the Congressional Legal Counsel"; and

(2) by striking out in subsection (b)(2) "or the Legislative Counsel of the House of Representatives or the Senate" and inserting in lieu thereof the following: "the Legislative Counsel of the House of Representatives or the Senate, or the Congressional Legal Counsel".

(b) Section 3216(a)(1)(A) of such title is amended by striking out "and the Legislative Counsels of the House of Representatives and the Senate" and inserting in lieu thereof the following: "the Legislative Counsels of the House of Representatives and the Senate, and the Congressional Legal Counsel".

(c) Section 3219 of such title is amended by striking out "or the Legislative Counsels of the House of Representatives or the Senate" and inserting in lieu thereof the following: "the Legislative Counsels of the House of Representatives or the Senate, or the Congressional Legal Counsel".

(d) Section 8 of the Act entitled "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and sixty-six, and for other purposes", approved March 3, 1875, as amended (2 U.S.C. 118), is repealed.

(e) The Standing Order of the Senate "authorizing suits by Senate Committees" (S. Jour. 572, 70-1, May 28, 1928), is rescinded.

(f) Section 1016 of the Impoundment Control Act of 1974 (31 U.S.C. 1406) is amended by adding after the word "selection" the following: "including the Congressional Legal Counsel".

(g) Chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following new sections:

(1) "§ 1364. Congressional actions—

"(a) The District Court for the District of Columbia shall have original jurisdiction, without regard to the sum or value of the matter in controversy, over any civil action brought by Congress, a House of Congress, any committee of Congress, any subcommittee of the Senate, or any joint committee of Congress or subcommittee thereof to enforce, or secure a declaration concerning the validity of, any subpoena or order issued by Congress, or such House, committee, subcommittee, or joint committee to any entity acting or purporting to act under color or authority of State law or to any natural person to secure the production of documents or other materials of any kind or the answering of any deposition or interrogatory or to secure testimony or any combination thereof.

"(b) The scope of review by the court shall extend only to whether (1) there is a legislative purpose on behalf of which information is sought, (2) authority has been delegated by Congress for the committee, joint committee or subcommittee issuing the subpoena to conduct the inquiry, and (3) the information sought, documentary or testi-

monial, is pertinent to the subject under inquiry.

"(c) Congress, a House of Congress, or any committee of Congress, any subcommittee of the Senate, or any joint committee of Congress or subcommittee thereof, authorized by Congress to bring suit, in addition to any other available remedies, including but not limited to a criminal proceeding for contempt or a proceeding by a House of Congress for contempt, may commence and prosecute a civil action under subsection (a) of this section in its own name or in its own name and in the name of the United States in the District Court for the District of Columbia to enforce or secure a declaration concerning the validity of any subpoena or order issued by Congress, such House, committee, subcommittee, or joint committee against any entity acting or purporting to act under color or authority of State law or to any natural person to secure the production of documents or any other materials of any kind or the answering of any deposition or interrogatory or to secure testimony or any combination thereof.

"(d) Congress, or either House of Congress, any committee, subcommittee or joint committee of Congress commencing and prosecuting a civil action under this section may be represented in such action by such attorneys as it may designate."

(2) "§ 1365. Congressional actions

"(a) The District Court for the District of Columbia shall have original jurisdiction, without regard to the sum or value of the matter in controversy, over any civil action in the nature of mandamus brought by Congress, either House of Congress, any committee of such House, or any joint committee of Congress in its own name or in its own name and in the name of the United States to compel an officer or employee of the United States or any agency thereof, to perform a duty prescribed by law.

"(b) Congress, or either House of Congress, any committee of such House authorized by such House to bring suit, or any joint committee of Congress authorized by Congress to bring suit, in addition to any other available remedies, including but not limited to a criminal proceeding for contempt or a proceeding by a House of Congress for contempt, may commence and prosecute a civil action under subsection (a) of this section in its own name or in its own name and in the name of the United States in the District Court for the District of Columbia to compel an officer or employee of the United States or any agency thereof, to perform a duty prescribed by law.

"(c) Congress, or either House of Congress, any committee of such House, or any joint committee of Congress commencing and prosecuting a civil action under this section may be represented in such action by such attorneys as it may designate."

(3) The analysis of such chapter 85 is amended by adding at the end thereof the following new items:

"1364. Congressional actions 1365: Congressional actions"

(h) Section 2403 of title 28, United States Code, is amended by adding at the end thereof the following:

"Provided however, the Court shall not permit the United States to intervene to challenge the constitutionality of any Act of Congress affecting the public interest."

SEPARABILITY

SEC. 17. If any part of this Act is held invalid, the remainder of the Act shall not be affected thereby. The provisions of any part of this Act, or the application thereof to any person or circumstance if held invalid, the provisions of other parts and their application to other persons or circumstances shall not be affected thereby.

AUTHORIZATION OF APPROPRIATIONS

SEC. 18. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act. Amounts so appropriated shall be disbursed by the Secretary of the Senate upon vouchers signed by the Congressional Legal Counsel, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM—S. 1943

AMENDMENT NO. 1548

(Ordered to be printed and referred to the Committee on Foreign Relations.)

Mr. SPARKMAN. Mr. President, by request I submit for appropriate reference an amendment to S. 1943, a bill to amend title VIII of the Foreign Service Act of 1946, as amended, relating to the Foreign Service Retirement and Disability System, and for other purposes, which is now pending before the Foreign Relations Committee.

The bill and the amendment have been requested by the Department of State and I am now introducing the amendment in order that Members of the Senate and the public may direct their attention and comments to it.

I reserve my right to support or oppose this amendment as well as any other suggested amendments when the bill and the amendment are considered by the Committee on Foreign Relations.

I ask unanimous consent that the amendment be printed in the RECORD, together with the letter from the Assistant Secretary of State for Congressional Relations to the President of the Senate dated March 24, 1976.

There being no objection, the amendment and letter were ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 1548

On page 28, lines 13 and 14, strike the following: "1 per centum plus".

DEPARTMENT OF STATE,  
Washington, D.C., March 24, 1976.

HON. NELSON A. ROCKEFELLER,  
President of the Senate.

DEAR MR. PRESIDENT: In accordance with the President's message of March 24, 1976, we submit for consideration of the Congress, and urge favorable action on the enclosed draft amendment which would eliminate the extra one percent feature in the cost-of-living adjustment formula of the Foreign Service retirement system.

Under the current formula, Foreign Service retirement annuities are adjusted on the first day of the third month that begins after the Consumer Price Index (CPI) has risen at least three percent above the point which triggered the last adjustment, and remained at the higher level for three consecutive months. The annuity increase equals the highest percentage increase in the CPI during the three-month period, plus one percent.

Experience has shown that the one percent feature is operating to overcompensate retirees for increases in the cost of living. This can be seen from the fact that since May, 1970, when the present formula was established for the Foreign Service, annuities have been increased 62 percent whereas the CPI has risen only 48 percent over the period for which these increases were granted.

The extra one percent overcompensates because it is permanently added to the annuity base and is compounded with every subsequent increase. This compounding problem has been exacerbated in recent years by increases being effectuated every 6 months instead of every 12 or 18 months which was the expectation at the time the provision was added.

The elimination of this extra one percent feature from the Foreign Service formula would produce annual savings of approximately \$5 million in fiscal year 1977 progressing to \$6 million in fiscal year 1981 from expenditures projected under current law.

The enclosed draft amendment, together with companion measures for the Civil Service, Central Intelligence Agency and military retirement systems, which we understand are being forwarded at this time, would effect the necessary changes in the annuity adjustment provisions of the civilian retirement programs.

S. 1943, a bill "To amend title VIII of the Foreign Service Act of 1946, as amended, relating to the Foreign Service Retirement and Disability System, and for other purposes" is now pending before the Foreign Relations Committee. One purpose of this bill, which we recommended to you on June 2, 1975, is to conform appropriate features of the Foreign Service retirement system with comparable features of the Civil Service retirement system. The cost-of-living adjustment formula is an area where such conformity should be established and maintained. Section 115 of S. 1943, as modified by the enclosed draft amendment, would carry out that purpose. Accordingly, we recommend early action on this Foreign Service retirement legislation in order to implement this necessary change in the cost-of-living adjustment formula and in order to make other desirable changes in the Foreign Service retirement system.

We are informed by the Office of Management and Budget that enactment of this amendment would be in accord with the program of the President.

We are sending a similar letter to the Speaker of the House of Representatives.

Sincerely yours,

ROBERT J. MCCLOSKEY,  
Assistant Secretary for Congressional Relations.

NEW RIVER—S. 158

AMENDMENT NO. 1549

(Ordered to be printed and referred to the Committee on Interior and Insular Affairs.)

Mr. HELMS submitted an amendment intended to be proposed by him to the bill (S. 158) to amend the Wild and Scenic Rivers Act of 1968 by designating a segment of the New River as a potential component of the National Wild and Scenic Rivers System.

FOOD STAMP ACT AMENDMENTS OF 1976—S. 3136

AMENDMENT NO. 1550

(Ordered to be printed and to lie on the table.)

ELIMINATING THE FOOD STAMP PURCHASE REQUIREMENT

Mr. DOLE. Mr. President, S. 3136, the National Food Stamp Reform Act of 1976, limits participation in the food stamp program to households with net